

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CLAUDE M. AND MARGARET G. SHANKS)

For Appellant: Claude M. Shanks, in pro. per.
For Respondent: Jean Harrison Oqrod
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Claude M. and Margaret G. Shanks against a proposed assessment of additional personal income tax in the amount of \$900.06 for the year 1976.

Appeal of Claude M. and Margaret G. Shanks

The sole question presented by this appeal is whether respondent Franchise Tax Board has properly applied section 17299 of the Revenue and Taxation Code so as to disallow certain expense deductions claimed by appellants in connection with rental property owned by them which had been determined to be substandard housing.

Appellants own a one-half interest in an apartment house located at 2011 Vallejo Street, San Francisco, California. The San Francisco Bureau of Building Inspection (BBI) inspected that property and determined that it was in violation of certain health, safety and/or building codes. Although the record is not clear on this point, it appears that notification of those violations was sent either to appellants or to their attorney, who managed the property.

Subsequently, the BBI inspected the Vallejo Street property again and determined that the code violations continued. On or about November 20, 1975, it issued a notice of noncompliance to appellants. That notice advised appellants that unless the substandard conditions were corrected within ten days, or an appeal was filed with the Abatement Appeals Board of the BBI within that same period, a copy of the notice of noncompliance would be sent to respondent, pursuant to the provisions of section 17299 of the California Revenue and Taxation Code. The notice also informed appellants of the tax consequences of the BBI's being obliged to notify respondent of their noncompliance.

Appellants did not file an appeal with the Abatement Appeals Board, nor did they correct the substandard conditions within the time prescribed. The BBI therefore mailed a copy of the notice of noncompliance to respondent. The notice indicated the date of noncompliance to be December 1, 1975, and respondent received no notice that the property was brought into compliance during 1976.

Upon examination of appellants' 1976 California personal income tax return, respondent noted that they reported gross rental income from the Vallejo Street property in the amount of \$14,464.00. They also claimed deductions totalling \$10,069.00 for interest, taxes and depreciation relating to that property. Since the substandard conditions continued throughout 1976, respondent disallowed those deductions in their entirety. That action gave rise to this appeal.

Appeal of Claude M. and Margaret G. Shanks

The issue presented by this case is identical to that before us in the Appeal of Robert J. and Vera Cort, decided this day. In that opinion, we discussed at some length the relevant law and the propriety of respondent's disallowance of similar deductions claimed by the Cortes in connection with property which had been determined to constitute substandard rental housing. We there concluded that respondent's action had been in complete conformity with the law, as set forth in section 17299 of the Revenue and Taxation Code. We see no reason to reach a different conclusion in the instant case.

Appellants herein apparently are contending that they should not be required to pay the proposed deficiency because the BBI did not give them adequate notice of the substandard conditions determined to exist in the Vallejo Street property. Appellants suggest that the initial notice of code violations may have been sent to their attorney; but if it was, they were never told about it. Appellants claim their first knowledge of the code violations came when they received respondent's notice of the proposed assessment resulting from its disallowance of the deductions claimed with respect to the property.

The latter statement is contradicted by evidence contained in the record. On or about November 20, 1975, the BBI mailed its notice of noncompliance to appellants by certified mail with a return receipt requested. A copy of the return receipt signed by appellant Claude M. Shanks indicates that he received the notice of noncompliance on November 22, 1975. Even if appellants had not received the earlier notice of substandard conditions, the notice of noncompliance would have alerted them to the BBI's determination. That notice also advised them of their right to appeal to the Abatement Appeals Board, a right which they chose not to exercise. Any argument regarding improper notice of the code violations should have been addressed to that local forum, not to respondent or to this board.

For the above reasons, and for those set forth in the Appeal of Robert J. and Vera Cort, supra, we conclude that respondent's action in this matter must be sustained.

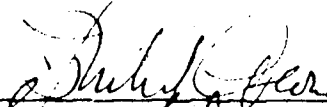
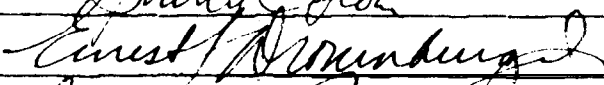
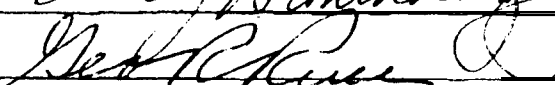
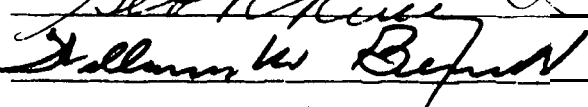
Appeal of Claude M. and Margaret G. Shanks

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 1.8595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Claude M. and Margaret G. Shanks against a proposed assessment of additional personal income tax in the amount of \$900.06 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day
of May, 1980, by the State Board of Equalization.

	_____	, Chairman
	_____	, Member
	_____	, Member
	_____	, Member
_____	_____	, Member